

QUESTION I - FEBRUARY 2007

PLEASE NOTE: QUESTION I was a "Multistate Performance Test" (MPT) and is not reproduced here. For additional information see: <http://www.ncbex.org/>.

QUESTION II - FEBRUARY 2007

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Model Answers

QUESTION III - FEBRUARY 2007

Inspired by longstanding and widespread constituent dissatisfaction with Vermont's education funding mechanism, during the first three weeks of the 2007 session the Vermont Legislature and Governor scrambled to revise the system for funding Vermont's schools. Any attempt to shift the tax burden from one set of Vermonters to another seemed destined to fail; each potentially aggrieved constituency quickly organized and beat back the proposed tax shift. After weeks of debate, the Legislature and Governor found the magic bullet: they passed the "Smart Growth Promotion Act," a property-acquisition tax assessed against non-Vermont purchasers of real property. In addition to the ordinary lump-sum property transfer tax payable by sellers in connection with most real property transfers in Vermont, the new law requires purchasers who reside out of state, or who have resided in Vermont for less than one year, to pay a property acquisition tax equal to 5% of the purchase price of the property in question.

The stated rationale for the selective taxation was a desire to control growth and development in Vermont by creating a modest disincentive for newcomers to purchase land in Vermont. A corollary benefit of the bill will be significant new tax revenues that can be used to reduce the more general property and income tax burden on Vermonters. The law became effective on February 1.

Paula Penurious, an advocate for limiting school spending, was furious. She had argued for requiring dramatic cuts in school budgets, coupled with across-the-board tax cuts, to address the school-funding crunch. Penurious has lived in Vermont for 20 years, and owns a farm in Addison. She has no plans to sell her farm. Ned Newcomer recently agreed to purchase a farm in Bridport and is moving to Vermont from his home state of Ohio. He is supposed to close the deal on March 31, and as a result of the new law he will be required to pay an additional \$15,000 when he purchases his farm. Penurious and Newcomer have joined together in challenging the new law, filing a declaratory judgment action in Superior Court seeking a determination that the law is unconstitutional.

1. Analyze Paula Penurious' and Ned Newcomer's standing to challenge the law.
2. Analyze Penurious' and Newcomer's constitutional claims.

Model Answers

QUESTION IV - FEBRUARY 2007

Eighteen months ago, Landlord leased a residential unit to Tenant in Smallville. There was no written lease between Landlord and Tenant; their agreement was just a "handshake" whereby Tenant agreed to pay Landlord \$500 per month rent. Prior to moving in Tenant paid a security deposit of \$1500. Smallville does not have any local ordinances governing landlord-tenant issues.

Tenant was originally reliable, paying rent in a timely manner for the first sixteen months of his tenancy. However, two months ago he lost his job and became a problem for Landlord and other people in Smallville, incurring numerous unpaid debts. He has not paid any rent to Landlord since.

Two weeks ago, Tenant cleared out of the unit in the middle of the night taking almost all of his belongings with him, but leaving behind a small pile of "junk" as well. Landlord has made extensive inquiries and no one seems to know where Tenant went. Everyone agrees, however, that it is unlikely Tenant intends to return given the large number of unpaid debts he left behind in town. Landlord then changed the locks on Tenant's unit.

Landlord also made quick work out of removing Tenant's pile of junk so that she could show the unit to a prospective new tenant this week. In clearing out Tenant's pile of junk, Landlord found what she believes to be an original Norman Rockwell sketch in the pile of junk, which may be very valuable. In addition to the small pile of junk that Tenant left behind, Landlord found, upon inspection, that there was a long, deep scratch across the front of the refrigerator door and the living room carpet was worn in several locations.

Landlord also found that the small deck connected to Tenant's unit was mildewed and beginning to rot. Landlord has had a long-running dispute with a next-door neighbor over a large pine tree that shades the deck. The trunk of the tree is entirely on neighbor's property. However, the branches of the large pine overhang Landlord's property and shade the deck. Landlord has repeatedly asked Neighbor to cut down the tree, but Neighbor adamantly refuses to do so.

(1) Can Landlord retain the security deposit and apply it to the unpaid rent and/or to the physical damage to the property? Discuss and analyze.

(2) What can Landlord do to protect or create an ownership interest in the potential Rockwell sketch? Discuss and analyze.

(3) If Tenant does return looking for the Rockwell sketch or any of the rest of his belongings can he enter his old unit without the Landlord's permission? Discuss and analyze.

(4) Can Landlord now enter the unit and show it to a prospective tenant? Discuss and analyze.

(5) Can Landlord cut down the tree or any part of it to prevent the shade on Landlord's property? Discuss and analyze.

Model Answers

QUESTION V - FEBRUARY 2007

Fred is the owner and sole proprietor of several local hamburger fast food restaurants, all located in Vermont, that are licensed (franchised) by a national chain, Burgers. Burgers is a Delaware corporation. Its only business offices are located in Delaware, and it does not own any of its own restaurants in Vermont.

Fred is required under the terms of his franchise agreement with Burgers to purchase all products used in his restaurants from a single supply company called National Supply, and he does so. For example, Fred has always purchased cooking oil for his restaurants from National Supply, which in turn purchased it from various suppliers. All of these suppliers are members of the Cooking Oil Association, which has promoted through industry and trade media the desirability of cooking with oil that contains trans fats.

Fred also acquired other products from National Supply, including a cleaning product that left stains on the flooring of his restaurants. Because of the stains, Fred has twice replaced the flooring at a total cost of \$250,000.

Mary loves to eat at Fred's restaurants, and every day of her adult life purchased and consumed hash brown potatoes (for breakfast) and French fried potatoes (for lunch and dinner). She had done so even though there have been over the past 15 years numerous news reports of the suspected dangers of ingesting trans fats found in cooking oil.

Mary was recently diagnosed as having a medical problem associated with the ingestion of trans fats, which are found in the cooking oil in which Fred cooks his potatoes.

1. What are the legal theories under which Mary may bring tort claims against Fred. Explain the different elements of each such claim and defenses to each such theory.
2. If Fred is the sole defendant named by Mary in an action filed in a Vermont Superior Court, explain what pleading he may file that would cause Burgers and National Supply to be brought into the action as a party. Explain whether Fred should include in this pleading his claim against National Supply for the flooring damages.
3. Please explain whether Vermont courts can assert personal jurisdiction over Burgers.
4. Under Vermont law, explain whether Fred may obtain either contribution or indemnity from Burgers or National Supply, and explain what Fred must show to successfully pursue any such claim.

5. Under Vermont law, if Mary had brought suit and recovered judgment against Fred, Burgers and National Supply in the full amount of her claimed damages, explain whether Mary may collect the full amount of that judgment from any one of those three defendants.

Model Answers

QUESTION VI - FEBRUARY 2007

On November 1, 2004, Frank Farmer approached his new neighbor, Nancy, about leasing 50 acres of her property. The 50 acres contains a large and once productive stand of sugar maples, a "sugarbush," that Frank hoped to tap in the spring to produce and sell maple syrup.

During their conversation, Frank advised Nancy that he would need to purchase a new evaporator to accommodate the additional volume of sap he expects the sugarbush to yield, and that he required a lease term of no less than 10 years to ensure he could pay for the evaporator. He also said he expected to produce so much syrup that he would give her 10 gallons. This sounded great to Nancy. Nancy hand-wrote the following note and left it in his mailbox:

November 1, 2004

Dear Frank,

I agree to lease you the easterly half of my property (approximately 50 acres) including the old sugarbush for 10 years for \$500 per year.

Thanks

Your neighbor,

Nancy

Frank wrote back to Nancy:

November 20, 2004

Dear Nancy,

Thank you. When the sugaring season is over, I'll bring you some syrup.

Sincerely,

Frank

On December 1, 2004, Frank paid Nancy \$500. He then went to Sam's Farm Supply to purchase a new gas-fired evaporator for \$6,000 on credit with Sam's. Due to prior experiences with Frank, Sam would not sell the evaporator on credit unless Frank had a co-signor.

Not knowing where to turn, Frank went to Nancy and told her that he could not purchase the evaporator without a co-signor and that he would not be able to continue with the lease. Nancy was really looking forward to the lease payments and the maple syrup Frank had said he would give her, so she offered to co-sign for the evaporator. Frank was very excited about getting his new syrup operation going and agreed to have Nancy act as the co-signor.

On January 1, 2005, Frank purchased the evaporator. He signed a credit agreement with Sam's that required him to make equal monthly payments and to pay for the evaporator in one year. Nancy signed at the bottom of the credit agreement on a line with the word "guarantor" written under it.

Later that winter, Frank discovered he needed \$1,000 in additional parts for the evaporator and went back to Sam's. Sam agreed to add them to the credit agreement along with the evaporator. Nancy did not know anything about these additional purchases.

That spring of 2005 was extremely warm and dry, and the sugarbush did not produce nearly the amount of syrup Frank had anticipated. Frank did not deliver any syrup to Nancy, but Nancy had heard he was having a difficult time and decided not to say anything. That summer, Frank went to Sam and told him about the problems with the syrup business. He told him that he could not keep up with the evaporator (and additional parts) payments. Being in the farm supply business, Sam understood and agreed to extend the credit agreement and stretch the payments out over an additional six months, through July 1, 2006.

The next year, the spring was so cold that Frank again produced very little syrup. On April 1, 2006, Frank made another \$500 payment to Nancy, but again did not deliver her any syrup. Frank stopped making payments to Sam's.

Nancy is very upset at not having received any syrup from Frank. She demands that he provide her with 20 gallons of syrup or she will terminate the lease.

Sam demands payment for the evaporator and additional parts from Nancy.

1. Please discuss in detail whether there is a valid and enforceable lease between Frank and Nancy, and if so, what the terms of the lease are.
2. Assuming there is a valid lease, please discuss Nancy's rights to receive maple syrup from Frank.
3. Please discuss Nancy's common law rights and responsibilities to Sam's for the unpaid balance on the evaporator and the additional parts. Do not discuss or consider any rights or remedies under the Uniform Commercial Code.

Model Answers

Board of Bar Examiners

2418 Airport Road, Suite 2

Barre, VT 05641

109 State St. Montpelier VT 05609-0702

TEL: (802) 828-3281

FAX: (802) 828-1695